

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



~~FILED SEP 21 1934~~

*Henry W. Hodges*  
United States Court of Appeals for the  
District of Columbia

OCTOBER TERM, 1934.

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No. 6213  
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542

VIRGINIA D. MALONE,

*Appellant,*

*vs.*

ROBERT J. HOAGE, DEPUTY COMMISSIONER FOR THE  
DISTRICT OF COLUMBIA, AND WASHINGTON TERMINAL  
COMPANY, A BODY CORPORATE,

*Appellees.*

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BRIEF FOR APPELLEE, WASHINGTON TERMINAL  
COMPANY.  
\_\_\_\_\_

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**Argument.**

Court review is limited by the Act to a determination as to whether the Compensation Order is in accordance with law. If in accordance with law, the Commissioner's Findings are final. In *Crowell v. Benson*, 285 U. S. 22, at p. 47, the Court said:

“The object is to secure within the prescribed limits of the employer's liability an immediate investigation and a sound practical judgment, and the efficiency of

the plan *depends upon the finality of the determinations of fact with respect to the circumstances, nature, extent, and consequences of the employee's injuries and the amount of compensation that should be accorded.*"

And in *Powell v. Hoage*, 61 App. D. C., 99, the Court said:

"We therefore reach the conclusion that the cases in which we may set aside an order of the Commissioner as 'not in accordance with law' are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. If the finding, however, is supported by substantial evidence, it is final."

In *Employers' Liability Company v. Hoage*, #5929, January 29, 1934, 62 W. L. R. 140 the Court said:

"Only in a case in which there is no evidence reasonably to support the findings, may we set aside the award made by the Deputy Commissioner."

The ORDER in this case was a rejection of the claim in the following form:

"Upon the foregoing findings of fact, it is ordered by the Deputy Commissioner that the claim for compensation be and the same hereby is REJECTED for the following reasons:

"That the claimant failed to establish by evidence that the conditions from which the employee died, namely, acute cardiac dilatation and cardio renal hepatic disease, were caused, activated or precipitated by the injury suffered by the employee on March 24, 1932, but that the death of the employee was due to causes entirely unrelated to the injury sustained by the employee on March 24, 1932."

The only question, then, for this Court is whether the statement in the order:

That Malone's death was due to acute cardiac dilatation with cardio renal hepatic disease as contributory cause; that the conditions from which Malone died were not caused, activated or precipitated by Malone's injury on March 24, 1932; but that Malone's death was due to causes entirely unrelated to said injury

is without evidence in the record reasonably to support the findings.

The findings of the Commissioner have very ample support in the testimony of the following witnesses:

*Dr. Magruder McDonald*, then acting, now Coroner, who performed the autopsy.

"The cause of death in this case was acute cardiac dilatation with cardio renal hepatic disease as the contributory cause." \* \* \* (R. p. 58.)

Q. "If you had such a history, is there, in your opinion, any causal relation between the strain of the arm at that time and the condition you found causing the death?

A. A sprain of a wrist is a very common condition and, of course, we do admit that severe injuries to bones and joints will produce a state of shock, but I do not see how it could produce, being a sprain of the wrist, an extensive condition such as existed, such an extensive condition as we found in this particular case." \* \* \* (R. p. 59.)

Q. "Supposing the history of the case was that this man received a blow to the wrist, such as to fell him, in March, 1932, March 24th;

Would you say such a shock might aggravate this condition you found?

A. If a shock exists it exists for a short period of time. It would, right after that, but I do not see how any shock could produce as extensive lesions as I found in this body." (R. p. 60.)

"I have never seen a shock such as you have described unless other things were involved attributed to a sprain of the wrist." \* \* \* (R. p. 61.)

"I can say that such an injury would increase his difficulty to a certain extent, but it would not influence the general pathology of his condition in the nature of the cardio renal hepatic disease." (R. p. 67.)

*Dr. Guy L. Alexander:*

"He came in with an injury that has been described, sprain of the wrist; the circumstances were such and the character of the injury was such that I thought it best for an X-ray to be taken and I sent him to Emergency Hospital for an X-ray.

Q. What did the X-ray disclose?

A. No injury to the bones or joints." \* \* \* (R. p. 130.)

Q. "Had you an opinion as to the condition of Mr. Malone's chest?

A. No. We felt that there was no connection between the chest and the injury; otherwise we would not have sent him out" \* \* \* (R. p. 132.)

Q. "Now, I ask you whether the injury to the arm would, in your opinion, have caused death by acute cardiac dilatation and cardio renal hepatic disease?

A. It would not." \* \* \* (R. p. 135.)

*By the Deputy Commissioner:*

Q. "What effect did the injury have on the activation of those circumstances or events, the string of circumstances, that terminated in death?

A. I do not know any it had. It had no bearing whatever. I think his injury to his arm was merely incidental." \* \* \*

"Incidental. A man can have any kind of a disease and is liable to get injured at some time.

I do not think it had any bearing whatever. (R. p. 135.)

Q. Is it your opinion that the disease was there and the injury sustained was merely a localized affair without any general effect?

A. It had no effect on it at all." \* \* \* (R. pp. 135-136.)

Q. "Now, Doctor, from the history of events that are known in this case, do you think the added exertion just mentioned was the precipitating cause of the onset of the condition?

A. No, I do not." \* \* \* (R. p. 140.)

*Dr. Charles W Harnsberger:*

"The first time he consulted me was on the 13th day of June, 1932.

At that time he gave a history of having, that is, he came to me complaining of discomfort, mostly in the epigastrium and through the center of the chest, through to the shoulders.

He said, he made a statement that on March 24th, he attributed those troubles to an accident which he said occurred on March 24, 1932, and said that at that time he was injured, as he described it to me, by a twist of his right wrist and the period, ten days later, he had pain in the center of his chest.

That is all I have: pain in the center of the chest and that lasted apparently a short time.

Q. Yes. Did you make any attribution of those symptoms to any particular organ?

A. Well, my opinion is, my diagnosis in this case—I studied him out very thoroughly, including everything, I did a Wassermann, his blood, urine, made a gastric analysis and whatnot, and my diagnosis was a chronic myocarditis, probably a coronary thing.

That is what I attributed most of his pain to and involvement over the gall bladder and infected tonsils.

That is the summary of my findings." \* \* \* (R., pp. 146-147.)

(The witness thereupon examined the death certificate heretofore received in evidence as is above indicated.)

By Mr. Gower:

Q. "What effect, if any, in your opinion, Doctor, would an injury to his wrist, or the injury to his wrist which you saw, have upon his death?

A. None, whatsoever that I could see. That is what I told him the day he came in with the history he gave me. The first thing he started out with was this accident and I could not see any connection between the wrist and his general condition, and I told him 'Let's forget the wrist and find out what is the matter with you.' " \* \* \* (R., p. 147.)

Q. \* \* \* "People that have this myocarditis might live until the disease overcomes them; that is true, of course. Assuming that such a person as you found Mr. Malone to be, having this condition, received an injury with resulting shock that makes him nervous and he becomes more and more nervous from the date of the injury and then returns to work, would say that returning to his work would add exertion on him?

A. No, I would not, because I think the injury absolutely was of such a slight nature that it would not upset his nerves.

His apprehension, mostly, was about the terrific pain he had in the center of the chest. He was more or less apprehensive of the pains in the chest." \* \* \* (R., p. 148.)

Q. "And, in your opinion, Doctor, you do not believe that a blow of any sort may in way accelerate or aggravate a heart condition?

A. If a man had a very acute cardiac condition and he had an injury it may upset him temporarily, for a period of twenty-four hours, something like that. You might see a person get bothered with such a thing as a hyper-thyroidism, or something like that.

Q. You do not believe it could permanently upset him?

A. No, I do not. I know it could not. It absolutely could not.

Q. You do not believe there is any connection between the myocarditis and the physical well being and the nervous condition of the patient?

A. No, I do not. I think it was an organic trouble, that myocarditis and coronary thrombosis, which was causing his nervous condition. That is what I told him all the time. It was his physical condition and not his injury, but he seemed to always try to connect them in some way." (R., p. 150.)

*Dr. J. Duerson Stout:*

"The psychoneurosis, conversion hysteria, such as I found, is a purely functional state: it has no influence on the heart or on the circulation or kidneys in any way except that it causes them to, in the case of the heart, beat faster; in the case of vessels, to be under a little greater tension, but not an organic condition, but functional.

I can see no relationship between the functional state such as I found and the cardiac disease such as was reported to be the cause of his death, in the subsequent December." \* \* \* (R., pp. 47-48.)

Q. "Would you say that his condition was weaker or stronger after injury he received; I mean his general physical condition.

A. I see no reason why an injury received, such as his, should cause a weakening of the sense of what I understand you to mean by 'weakening.'

Q. What I meant was the shock necessarily that will follow from a blow he received, the history of which he related to you.

Would you say that he would be in the same condition to perform his work as he was before he received this injury?

A. No; because he was psychoneurotic." \* \* \* (R., p. 49.)

Q. "So that in your answer to Mr. Goldstein just a moment ago that it was all wound up in this injury, this psychoneurotic condition, we are to take into consideration that matter in your report?

A. Yes."

the cases heretofore decided. Whether the benefits should be so extended, is a matter to be determined by the Legislature.”

While in *Pierce v. Phelps Dodge Corporation*, 26 Pacific 2d, 1017 (Arizona 1933), there was an amendment to the Act which specifically construed the phrase—“Personal injury by accident arising out of, and in the course of the employment” to the effect that it did “not include a disease unless resulting from the injury”, nevertheless, the applicable part of the Arizona Statute—“injured and killed, by accident arising out of and in the course of his employment” is substantially similar to the provisions of the District of Columbia Act set out above. The Arizona Court said:

“It is obvious from this that when compensation is awarded in any manner for a disease there must have been (a) an unexpected event which was (b) the cause of an injury to the person, (c) which injury must have produced or aggravated a disease. Nor can the disease itself be the injury produced by the unexpected event, since the statute specifically says that it must be the result of the injury.”

The record shows that the phrases—“the machinery threw him to the ground”, “such a blow”, “the effects of such a blow” (R. p. 154; R. p. 46), “traumatic injury” (R. p. 104) were very freely used by counsel for appellant in the examination of witnesses at the hearing before the Deputy Commissioner. It is true that in the Brief for Appellant the claim that the injury involved a blow is not advanced. This is as it should be, for the record does not support any such claim and Counsel for Appellant submitted at the hearing that the matter was only an inference from testimony (R. p. 63). It is assumed that this theory will not be urged in argument of the case.

The only question in the case is whether there is any evidence reasonably to support the Findings of the Deputy Commissioner that the death of Malone from heart disease on December 4, 1932, was not caused, or activated or precipitated by the injury of March 24, 1932, to Malone's right wrist. We might reopen the consideration of the evidence by describing the injury as a "slight" one, as did one of the physicians (R. p. 148), but the court will find of more assistance Malone's own statements regarding the injury together with other pertinent extracts from the record.

Malone described the occurrence in a written statement to the Deputy Commissioner as follows (R. p. 15):

"On March 24, 1932, at the Eckington Power Plant of the Washington Terminal Company, I was badly injured in right wrist, being caught between a crank pin bearing and guard on a large air compressor. X-rays were taken at Emergency Hospital and showed no bones broken."

Malone's account of the injury made to Dr. Stout in giving the history of his case, was quoted by Dr. Stout as follows (R. p. 36):

"Mr. Malone informs me that he was in normal condition until the morning of March 24, 1932, when at about 9.00 a. m., he was starting up an air compressor, when he experienced an accident. He states that the compressor had not been used for about three weeks and as he started it, it made a noise indicating difficulty in some of the machinery. He put his hand on the crank pin to locate the noise. The engine was turning over slowly and at its first revolution after he put his hand on it, his hand and arm were caught between the moving crank and guard. The right wrist was bent back on the forearm and toward the shoulder. The back of the right elbow was cut. He extricated his arm and sat down. He was nauseated but did not vomit. He remembers that he thought at

that time that his arm was broken and he felt that it might have been broken in several places and a much more serious injury received. His fireman, assistant, came in two or three minutes later to see if he was all right and gave him emergency relief. He was sent to a hospital and the wounds dressed. At the time he experienced only numbness and pain. \* \* \*.

Dr. Alexander testified (R. p. 130):

“He came in with an injury that has been described, sprain of the wrist; the circumstances were such and the character of the injury was such that I thought it best for an X-ray to be taken and I sent him to Emergency Hospital for an X-ray. Q. What did the X-ray disclose? A. No injury to the bones or joints.

Mrs. Malone testified (R. p. 154):

“He told me his arm was thrown up and pushed like that, and he had a pain in his chest, and that this colored man came up and helped him to his feet after the fall. (By Mr. Goldstein:) Q. Did he tell you anything about whether the blow threw him in any way? A. It threw him on the floor, and he could not get up alone.”

The witness who first saw Malone after the accident, the colored man, Shipp said (R. p. 26):

“Right at the time he was injured he was on the floor when I comes in the engine room to get oil to oil the stoker—— That was the day of the injury, a minute or two after the injury. He was down on the floor and I walked over and got him by the arm and I said: ‘What is the matter?’ and he just groaned a time or two and *he got up* with a terrible frown on his face, and began to pull his arm and I asked him what was the matter and he said; ‘I have my arm caught feeling the bearing’, and I said; ‘Did it hurt bad? Do you want me to call up for you?’ And he said; ‘No, I will do it.’ He sat down and I helped him to the stool at

the desk and he sat down then and he got sick, blue looking and got sick and spit up a couple of mouthfuls of, as if he was vomiting—— Q. Of what? A. Mixed spit, a little blood mixed in it. \* \* \*,”

Malone filed claim for compensation for this wrist injury under the District of Columbia Workmen's Compensation Act, and the claim was allowed for disability from March 24 to April 30, 1932, and \$110.71 was paid to Malone by his employer as compensation.

In respect of the relation of Malone's wrist injury to his death from heart disease, eight months and ten days later, the effect of the testimony already set out is that one physician testified that the wrist injury may have induced a neurotic condition but that this condition did not have any effect on Malone's heart condition. And three physicians testified that the wrist injury had no causative relation to the death; and the support given by this testimony to the findings of the Deputy Commissioner is more than sufficient under the law to establish the compensation order as fully in accordance with the law, and beyond the jurisdiction of the Supreme Court of the District of Columbia, to set aside.

But even if the question were one of weight of testimony, which it is not, the Findings would have to stand. The contrary proof consists of the opinions of Drs. Battles and Krick.

“Dr. Battles (R. p. 79): Q. So, in your opinion, you would say that his death was accelerated or aggravated by this injury? A. That is my opinion.”

But this was modified on cross-examination.

(R. p. 83:) “The Deputy Commissioner: I wanted to know, whether, in his opinion, it accelerated the condition. He said it did not cause it. Would it precipitate or accelerate it?

“By Mr. Gower: Q. Would it precipitate or accelerate the progress of the disease, a blow on the chest?”

After discussion of the meaning of “precipitate” and “accelerate”, Dr. Battles answered (R. p. 84):

“I think it could to a nerve shock.”

If we get the meaning of this statement, it is that the injury might cause a nerve shock, and the nerve shock might accelerate the heart disease. Even to a layman, this rates high in improbability. But in this record we have the opinion of Dr. Stout, a neurologist, to exactly the opposite effect. Dr. Battles’ testimony is also affected by his written statement in evidence, part of which reads as follows (R. p. 86):

“I am of opinion that the chest symptoms are of nervous origin and secondary to his accident of March 24, 1932.”

It is fair to Dr. Battles to say, however, that in making this written statement, he relied upon the report of Dr. Lee, who had not found any heart trouble.

Dr. Krick is too recent a graduate in medicine to speak upon experience which would be very helpful. Dr. Krick graduated in 1930, just a little more than three years before the time he was on the stand. It is at least unconventional to refer to Dr. Krick as a heart expert. Dr. Krick said in part:

(R. p. 112:) “I would say it was a contributing factor, possibly the precipitating factor.”

(R. p. 113:) “I would say forty-one years is an exceedingly unusual age.” (For death from myocarditis.)

But these statements were made by Dr. Krick on the assumption that the chest pains did not occur until June. When it was pointed out that chest pains occurred as early

as March 26, (that is, that the chest pains did not come from Malone's return to work), Dr. Krick said (R. p. 126): "A. I cannot answer the question. You insert clauses. I cannot say that this injury is the cause of his death."

The testimony of Drs. Battles and Krick does not in any way lessen the effect of the evidence given by the physicians supporting the Findings; and this showing would seem to conclude this review. This being the condition with respect to the evidence, the decisions cited in the Brief for Appellant are without any application to the case, and we would not be justified in asking the attention of the Court to any comment we might make upon decisions which are so obviously irrelevant.

Full compensation for his wrist injury of March 24, 1932, was paid to Malone by his employer, the Washington Terminal Company, appellee, in accordance with an Order of the Deputy Commissioner, prior to the one under review in this case. And the Findings of the Deputy Commissioner, under this latter Order, that Malone's wrist injury had no connection with his death from heart disease on December 4, 1932, plainly have the support in adequate measure, of clear and unequivocal evidence. We therefore respectfully submit that there should be an affirmance of the decree of the lower court dismissing the bill to set aside the compensation Order rejecting the claim for compensation. We have quoted ample evidence to more than sustain the Commission's Order, and the Order should stand.

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